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Decision 05-10-046 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Adoption of its 2004 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement, for Review of Contract Administration, Least Cost Dispatch and Procurement Activities during the Record Period January 1, 2003, Through May 31, 2003, and for Approval of its 2004 Ongoing Competition Transition Charges (CTC) Revenue Requirement and Proposed Rate Design. (U 39 E)	Application 03-08-004 (Filed August 1, 2003)

ORDER DENYING REHEARING OF DECISION (D.) 05-01-031

In this decision , we dispose of applications for rehearing filed by Merced ID, Modesto ID, and jointly by, Alliance for Retail Energy Markets ("AReM"), California Large Energy Consumers Association ("CLECA") and California Manufacturers and Technology Association ("CMTA") (collectively, "Joint Parties") of Decision (D) 05-01-031 ("Decision"). We have carefully considered each and every one of the arguments raised by the parties and are of the opinion that no grounds for granting rehearing have been demonstrated. Accordingly, rehearing of D.05-01-031 is denied. Further, we deny Merced ID and Modesto ID's request for oral argument and AReM and CMTA's Motion to Intervene.

I. FACTS

In Decision (D.) 05-01-031 ("Decision"), the Commission adopted the 2004 revenue requirements for Pacific Gas and Electric Company's ("PG&E's") Energy Resource Recovery Account ("ERRA") and ongoing (or "tail") Competition Transition

Charge ("CTC"). In this decision, the Commission rejected the adjustments of the CTC calculation recommended by Merced Irrigation District ("Merced ID") and Modesto Irrigation District ("Modesto ID") for municipal departing load ("MDL"). (D.05-01-031, pp. 18-28.) The Commission also adopted 5.18 cents per kWh benchmark that PG&E proposed for calculating the ongoing CTC. (D.05-01-031, pp. 28-32.) The decision further permitted PG&E to include an additional 16 Qualified Facility ("QF") contracts in the utility's CTC revenue requirement. (D.05-01-031, pp. 35-37.) These are existing QF contracts that were extended by the Commission in D.02-08-071 and D.03-12-062. (D.05-01-035, pp. 35-38.)

Merced ID alleges that the decision: (1) violates Public Utilities Code Section 368(b); (2) is unlawfully discriminatory and in violation of Public Utilities Code Section 453, because it allegedly allows tail CTC to be calculated differently for similarly situated customers; (3) is contrary to Public Utilities Code Section 367(a) and (b); (4) is inconsistent with PG&E's tariffs and previous Commission decisions; and (5) misconstrues Public Utilities Code Section 367(a)(2) to impermissibly allow PG&E to recover in ongoing CTC costs associated with sixteen QF contracts that were extended in D.02-08-071 and D.03-12-062.

Modesto ID also raises arguments regarding recovery of the extended QF contracts through tail CTC, and alleges discriminatory treatment involving the CTC obligation for municipal departing load customers, and the lack of consistency with respect to Public Utilities Code Sections 367 and 368. Modesto ID also challenges the use of the levelized costs of the California Energy Commission ("CEC") for gas-fired combined cycle generators to determine the benchmark for calculating CTC.

Joint Parties raise the same challenges as Merced ID and Modesto ID concerning the Commission's determination for including the sixteen extended QF contracts for tail CTC recovery.

AReM and CMTA jointly filed a motion to intervene in order to join CLECA in its application for rehearing. Both Merced ID and Modesto ID request oral argument.

PG&E filed a response to the rehearing applications. In its response, PG&E opposes the rehearing applications.

II. DISCUSSION

A. The Commission did not act contrary to Public Utilities Code Section 367(a) and (b).

Merced ID challenges the Commission's application of subdivisions (a) and (b) of Public Utilities Code Sections 367.[1] Specifically, Merced ID argues that D.05-01-031 improperly focuses only on Section 367(a)(1)-(a)(6), and unlawfully ignores the "manner in which Sections 367(a) and 367(b) interact." (Merced ID's Rhg. App., pp. 7-8.) This argument has no merit.

In determining ongoing CTC liability, we correctly relied on Section 367(a), and the exemptions set forth in subdivisions (a)(1) through (a)(6), that define the recoverable ongoing CTC costs. This is what is called the "statutory methodology."[2] Subdivisions (a)(1) through (a)(6) set forth which CTC costs may continue to be recovered as "ongoing CTC" or "tail CTC" and any limitations on the recovery of these costs. In contrast, subdivision (b) concerns calculation of costs to be recovered through December 31, 2001 and does not address the recovery of ongoing CTC. This is obvious from the statutory language in each of these subdivisions. (Compare Pub. Util. Code, §367, subd. (a) & Pub. Util. Code, §367, subd. (b).) Thus, we correctly concluded that

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[1] Unless otherwise stated, all statutory references are to the Public Utilities Code.

[2] Some have argued that the Commission has adopted two methodologies for calculating the ongoing CTC: statutory methodology and the total portfolio methodology. However, this argument is without merit. As we noted in *Order Modifying Resolution E-3831 and Denying Rehearing of Resolution, As Modified* [D.05-01-035, p. 3 (slip op.)] (2005) ___ Cal.P.U.C.3d ____, "the total portfolio method [was not] another way to calculate the tail CTC," because the total portfolio methodology calculates the indifference costs, taking into account the tail CTC, as part of a blended charge." Therefore, the total portfolio methodology relates to the fair share of CRS costs, and not to a specific calculation of the ongoing CTC. In this same decision, we further noted that the total portfolio methodology was in no way inconsistent with the requirements of Public Utilities Code Section 367, and its subdivisions." (*Id.*)

Public Utilities Code Section 367(a)(1)-(a)(6) provided for the proper calculation of ongoing CTC. Accordingly, rehearing of this issue is denied.

B. The Commission did not violate Public Utilities Code Section 368(b).

In its rehearing application, Merced ID argues that MDL customers are allegedly required to pay a different CTC rate than bundled service customers, and that this constitutes a violation of Public Utilities Code Section 368(b). (Merced ID's Rhg. App., pp. 8-9.) Modesto ID makes a similar argument. (Modesto ID's Rhg. App., pp. 5-10.) These arguments are without merit.

Public Utilities Code Section 368(b) provides, in relevant part:

> "The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, that a bundled service customer pays. No cost shifting among customer classes, rate schedules, contract, or tariff options shall result from the separation required by this subdivision. . . ." (Pub. Util. Code, §368, subd. (b).)

In D.05-01-031, we rejected similar arguments raised by Merced ID and Modesto ID on the grounds that they were precluded under Section 1709. (D.05-01-031, pp. 27-28.) As we explained, previous Commission decisions had resolved the issue concerning the calculation methodology for ongoing CTC for MDL. This included D.03-07-028 which dealt with the CRS issues for MDL.[3] In that decision, we directed the

[3] Another decision cited in D.05-01-031, pp. 27-28, is D.03-03-040, which is the CRS decision for Customer Generation Departing Load ("CGDL"). In this decision, we determined that eligible costs were defined by Public Utilities Code Section 367(a)(1) through (a)(6). (*Opinion on Cost Responsibility Surcharge Mechanisms for Customer Generation Departing Load* ("*CGDL CRS Decision*") [D.03-04-030, pp. 33 (slip op.)] (2003) ___ Cal.P.U.C.3d ____; see also, *Order Modifying Resolution E-3831 and*

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investor owned utilities ("IOUs") to continue to charge ongoing CTC to MDL pursuant to their approved tariffs. (See *Order Adopting Cost Responsibility Surcharge Mechanisms for Municipal Departing Load* ("*MDL CRS Decision*") [D.03-07-028, pp. 40-44 (slip op.)] (2003) ___ Cal.P.U.C.3d ___.) Neither irrigation district raised a Section 368(b) challenge in an application for rehearing of D.03-07-0728, and thus, the decision became final and conclusive in all collateral actions or proceedings, under Public Utilities Code Section 1709. Accordingly, we correctly concluded that the irrigation districts were precluded from raising a collateral challenge, and determined that PG&E's calculation of the ongoing CTC, consistent with Section 367, would remain unchanged. (D.05-01-031, pp. 27-28.)

Regardless of whether the irrigation districts are barred by Section 1709, Merced ID and Modesto ID are wrong that the calculation method adopted in D.05-01-031 violates Section 368(b). As discussed above, the adopted methodology calculates the ongoing CTC for MDL in the same manner for DA, CGDL and bundled service customers by following the mandates found in Public Utilities Code Section 367(a). In applying this statutory provision, there is no deviation based on the type of customers. (*Order Modifying Resolution E-3831 and Denying Rehearing of Resolution, as Modified* [D.05-01-035], *supra*, at pp. 2-3 (slip op.).) Obviously, there will be different outcome as to the overall calculations for the CRS of any type of customers, especially where customers are not similarly situated. (*Id.* at p. 3 (slip op.), explaining why the total portfolio methodology is not another method for calculating ongoing CTC, but rather represents the calculation of the indifference costs, taking into the account the ongoing CTC, as part of a blended charge, when the customer is paying the power charge.) Applicants have failed to demonstrate grounds for granting rehearing on this issue.

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Denying Rehearing of Resolution, as Modified [D.05-01-035, pp. 2-3 (slip op.)] (2005) ___ Cal.P.U.C.3d ___.)

C. D.05-01-031 is not unlawfully discriminatory and does not violate Public Utilities Code Section 453.

Merced ID alleges that the Decision adopts a tail CTC calculation that treats MDL customers differently from "other similarly situated customers" in violation of subdivisions (a) and (c) of Section 453. (Merced ID's Rhg. App., pp. 10-13.) This allegation is unfounded.

Section 453 states, in pertinent part:

> "(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.
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> . . .
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> (c) No public utility shall establish or maintain any unreasonable differences as to rates, charges, service, facilities, or in any other respect, either as to between localities or as between classes of service." (Pub. Util. Code, § 453, subd. (a) and (c).)

To find a violation of Section 453, a party must demonstrate it has suffered prejudice or disadvantage in relation to a comparable situation. (See *Sunland Refining Corp.* (1976) 80 Cal.P.U.C. 806, 817.) Furthermore, not all discrimination is unlawful under Section 453. Rather,

> " 'the preference or prejudice must be unjust or undue. To be undue, the preference or prejudice must be shown to be a source of advantage to the parties or traffic allegedly favored and a detriment to the other parties or traffic.' " (*Reuben H. Donnelley Corp. v. Pacific Bell* (1991) 39 Cal.P.U.C.2d 209, 243 [quoting *California Portland Cement Co. v. Union Pacific Railroad* (1955) 54 Cal.P.U.C. 539, 542].)

Merced ID's claim of unlawful discrimination is based on the fact that the tail CTC charge for MDL customers is higher than the tail CTC charge for direct access and bundled service customers. (See Merced ID's Rhg. App., p. 12.) However, as discussed above, the statutory methodology is applied to all customers regardless of whether the customer is bundled, DA, CGDL, or MDL. Therefore, MDL customers have not been treated differently than other types of customers. There is no requirement that the application of the same methodology must result in the same charge for all customers. Accordingly, there is no basis for finding unlawful discrimination on this basis.

Merced ID next argues that the Decision is discriminatory because the higher tail CTC charge creates a competitive advantage for PG&E and direct access providers, to the detriment of irrigation districts and other publicly owned utilities. (See Merced ID's Rhg. App., p. 12.) Merced ID is mistaken. As discussed above, the calculation for tail CTC is based on the same statute and the same methodology for all customers and the differences in the tail CTC charge is not unlawfully discriminatory. This conclusion does not change simply because Merced ID believes it is at a competitive disadvantage to PG&E or direct access providers.

Merced ID also contends that the tail CTC calculation methodology violates Section 453(c) because PG&E is charging a customer location it does not serve more than it charges a customer location it does serve. (See Merced ID's Rhg. App., pp. 12-13.) This argument is without merit. As explained in the *MDL CRS Decision*:

> "The Commission's authority to impose [tail CTC] stems from the prior customers' status as bundled customers of an IOU, and does not presume any jurisdiction over the regulation of rates, charges or services offered by a publicly owned municipal utility. *The costs that are relevant in this proceeding to the departing load customers relate only to IOU service received by these customers* over which the Commission exercises jurisdiction, and not the ongoing service they are currently receiving from a publicly-owned utility." (*MDL CRS Decision* [D.03-07-028], *supra*, at pp. 44-45 (slip op.) , emphasis added.)

Thus, any difference in charge is based on the service received, not the location. Accordingly, there is no violation of Section 453(c).

Merced ID finally asserts that unlike CGDL customers, MDL customers did not agree to pay the higher tail CTC calculation adopted in D.03-04-030. Therefore, it contends that the Commission cannot adopt this calculation for MDL customers. (Merced ID's Rhg. App., p. 13.) As we have repeatedly explained in this order, the same methodology to calculate ongoing CTC has been applied to bundled service, direct access, CGDL and MDL customers.[4] This methodology is based on statute and there is no requirement that a party must “agree” to the statute’s requirements before it can be applied. Accordingly, applying the calculation adopted in D.03-04-030 does not result in treating MDL customers differently than bundled or direct access customers.

For the reasons discussed above, we find no grounds for concluding that the Decision was unlawful or violated Section 453(a) or (c). Accordingly, we deny rehearing on this issue.

D. D.05-01-031 is consistent with PG&E’s tariffs and previous Commission decisions.

Merced ID next assets that D.05-01-031 errs in finding that the Commission had previously addressed the method to be used for calculating tail CTC for MDL customers. Merced ID argues that while D.03-04-030 contains detailed language on how tail CTC payments will be calculated for customer generation departing load, D.03-07-028 does not. (Merced ID’s Rhg. App., pp. 4-5.) Consequently, it argues that the applicable tariff for calculating tail CTC for MDL customers is Preliminary Statement Part BB. (Merced ID’s Rhg. App., p. 6.) Merced ID is mistaken.

Merced ID’s arguments are based primarily on the fact that D.03-07-028 does not include a specific method for calculating tail CTC, but rather refers generally to section 367. We have previously considered this argument raised by Merced ID and rejected it. (See D.05-01-031, pp. 23-27.) In particular, we stated:

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[4] Despite Merced ID’s repeated arguments that the methodology for calculating ongoing CTC for CGDL customers is different than for bundled service and direct access customers, this is clearly not the case. Resolution E-3831 specifically requires the utilities to “revise their proposed CGDL Schedules to reflect . . . that [the] tail CTC surcharge is the same as that adopted for DA and bundled customers.” (Resolution E-3831, dated July 8, 2004, p. 29 [Ordering Paragraph No. 10]; see also Resolution E-3831, p. 19 [noting that “tail CTC adopted for each utility should uniformly apply to bundled, DA, and [CGDL] customers not otherwise exempt.”].)

> "In the discussion portion of the CTC section of D.03-07-028, we stated: 'We shall direct the IOUs [sic] continue to charge tail CTC to MDL pursuant to their approved tariffs.' (D.03-07-028, p. 46.) In Finding of Fact 25, we stated: 'A provision for ongoing or 'tail' CTC covering the cost categories defined in Section 367 is a necessary component of the MDL CRS in order to achieve bundled customer indifference.' (D.03-07-028, p. 78.)
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> When the CTC section is read together with Finding of Fact 25 and OP 3.c. of D.03-07-028, we can only conclude that a methodology for calculating the ongoing CTC was adopted using the so-called 'statutory' method." (D.05-01-031, p. 25.)

Merced ID argues that this conclusion is not supported by the factual record. (Merced ID's Rhg. App., pp. 5-6.) However, the record evidence cited by Merced ID simply demonstrates that PG&E was inconsistent with its reading of D.03-07-028 and had its own interpretation of what was required under Section 367(b). The fact that we gave little weight to this evidence does not constitute legal error. In D.05-01-031, we explained why we concluded that D.03-07-028 had specified a methodology for calculating tail CTC, and that this methodology was based on the requirements of Section 367. (See D.05-01-031, pp. 21-25.) Accordingly, Merced ID has failed to demonstrate legal error.

Merced ID further asserts Preliminary Statement BB of PG&E's electric service tariffs, which follows the language of Section 368(b), governs how tail CTC must be calculated. (Merced ID's Rhg. App., pp. 9-10.) Merced ID notes that the Commission recently determined in Resolution E-3903 that Preliminary Statement Part BB continued to apply. Consequently, Merced ID contends that the Decision is inconsistent with this tariff since it adopts a CTC calculation methodology that does not conform to Preliminary Statement Part BB. We disagree.

As explained in the Decision, Preliminary Statement Part BB was filed approximately five years ago and does not reflect the recent mandates contained in the *CGDL CRS Decision* and the *MDL CRS Decision*. (See D.05-01-031, pp. 26-27.) Thus, we concluded: "In light of these developments, we cannot agree with Merced ID's contention that the existing Preliminary Statement BB should prevail. To do so would ignore [our determinations in] D.03-04-030 and D.03-07-028." (D.05-01-031, p. 27.) Further, PG&E has filed advice letter 2433-E-B to implement D.03-07-028. This advice letter proposes a "brand new tariff that is specific to muni departing load and makes no comparison between the departing load, muni departing load and other customer groups" that would supersede Preliminary Statement BB." (1 RT, p. 60:23-25 (PG&E/Barry).) Therefore, it is clearly anticipated that a new tariff schedule will be established for MDL customers.

Further, Merced ID relies on language in Preliminary Statement Part BB that concerns the billing and payment of ongoing CTC.[5] However, Resolution E-3903 has suspended the collection of any ongoing CTC from departing load customers and specifically states that PG&E may not bill and collect ongoing CTC from departing load customers until issues relating to the billing, collection, and accounting for CRS revenues from MDL customers pursuant to D.03-07-028 are resolved. (Resolution E-3903, pp. 10 & 13.) Consequently, the language in Preliminary Statement Part BB is no longer applicable, since PG&E cannot bill and collect ongoing CTC from MDL customers at this time. D.05-01-031 only establishes the methodology for calculating ongoing CTC upon approval of future tariffs, and is not ordering PG&E to bill and collect based on this methodology. Accordingly, we have acted consistent with Resolution E-3903 and there is no conflict with Preliminary Statement Part BB.

Further, even if that language were still applicable, D.05-01-031 is not inconsistent with it. The language refers to "similarly situated" bundled service or direct access customers. However, in D.03-07-028 and D.03-08-076, we granted specific exceptions from paying all components of CRS (including tail CTC) to certain types of

[5] The language in Preliminary Statement Part BB relied on by Merced ID states: "Departing load customers are responsible for the same CTC and other nonbypassable charge payment amounts as would any similarly situated Bundled Service [or] Direct Access . . . customer." (PG&E Preliminary Statement BB, Cal. P.U.C. Sheet No. 19907-E.)

MDL customers. Moreover, we recognized that different tariff schedules would need to be established for each type of departing load customer. (See generally, Resolution E-3903, pp. 9-11.) Therefore, it is unlikely that MDL customers are be considered similarly situated. Under that circumstance, the language in Preliminary Statement Part BB concerning an equal CTC amount would not even apply.

For the reasons discussed above, we find no grounds for finding legal error and deny rehearing on this issue.

E. The Commission's benchmark for calculating ongoing CTC is lawful.

In D.05-01-031, we adopted a 5.18 cents benchmark for calculating ongoing CTC. This amount was based on information from the California Energy Commission ("CEC"). (See D.05-01-031, pp. 29-30.) Modesto ID contends that it was improper for the Decision to use the CEC information to determine the benchmark and asserts that the proper benchmark to be used should be the 6.874 cents that Modesto ID had proposed. (See, Modesto ID's Rhg. App., pp. 10-11.)

Although Modesto ID disagrees with our adopted benchmark, it has failed to specify why it believes adoption of this benchmark is unlawful. Based on the lack of specificity in its argument, we deny rehearing on this issue pursuant to Section 1732 and Rule 86.1. As the party seeking rehearing, Modesto ID has the burden to demonstrate the specific grounds upon which it considers the Decision to be unlawful, and vague assertions to the record or the law, without citation, may be afforded little weight.[6] (See Pub. Util. Code, § 1732; see also Cal. Code. Regs., tit. 20, § 86.1.)

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[6] Further, we considered the different benchmarks proposed and explained why we selected the 5.18 cents benchmark. (See D.05-01-031, pp. 28-32.) The fact that Modesto ID would have preferred a different outcome is not grounds for granting rehearing.

F. The Commission properly permitted PG&E to include the costs associated with the extension of 16 QF contracts as part of its ongoing CTC calculation.

In D.05-01-031, we permitted PG&E to include an additional 16 QF contracts in the utility's CTC revenue requirement. (D.05-01-031, pp. 35-37.) These were existing QF contracts that were extended by the Commission in D.02-08-071 & D.03-12-062. (D.02-08-071, p. 43 [Ordering Paragraph No. 7] (slip op.) & D.03-12-062, p. 92 [Ordering Paragraph No. 14] (slip op.); see also, D.05-01-031, pp. 35-38.)[7]

All three applicants challenge this conclusion and assert that by permitting PG&E to recover tail CTC for these 16 QF contracts violates Section 367(a)(2). (Merced ID's Rhg. App., pp. 13-16; Modesto ID's Rhg. App., pp. 3-5: Joint Parties' Rhg. App., pp. 2-3.)[8] Section 367(a)(2) provides:

> "Power purchase contract obligations shall continue for the duration of the contract. Costs associated with any buy-out, buy-down, or renegotiation of the contracts shall continue to be collected for the duration of any agreement governing the buy-out-buy-down, or renegotiated contract; provided, however, no power purchase contract shall be extended as a result of the buy-out, buy-down, or renegotiation." (Pub. Util. Code, §367, subd. (a)(2).)

Because Section 367(a)(2) referred to "buy-out, buy-down, or renegotiation" of QF contracts, the Commission concluded that this statutory provision

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[7] Rehearing of D.02-08-071 was denied by D.03-06-073. In D.03-12-062, the expiring or soon-to-expire QF contracts were extended for one-year and in D.04-01-050, these types of contracts were extended for a five years. D.04-07-037 denied rehearing of both D.03-12-062 and D.04-01-050. On April 4, 2005, the California Court of Appeal affirmed in full D.03-12-062, D.04-01-050 and D.04-07-037 in *Southern California Edison Company v. Public Utilities Commission of the State of California*, Case No. B177138 (California Court of Appeal, 2nd Appellate District, Division 7.)

[8] Joint Parties further supports their argument by arguing that D.05-01-031 is inconsistent with D.05-01-040, p. 38, which concluded that "the above-market costs of "New World" generation—meaning generation resources procured by the utilities since January 1, 2003, . . . , previously held by the Department of Water Resources, . . . should be excluded from the calculation of the CRS obligations of DA customers." (Joint Parties' Rhg. App., pp. 3-4.) This argument has no merit, since the costs in D.05-01-040 involved the recovery of DWR-related CRS costs and not the recovery of tail CTC costs.

was inapplicable, since the extension of the 16 QF contracts was a result of Commission orders. (See D.05-01-031, p. 37.) Consequently, we determined that PG&E could include these contracts as part of its CTC revenue requirement.

Modesto ID, Merced ID and Joint Parties argue that the Commission incorrectly relied on the second sentence in Section 367(a)(2) for its conclusion. All three Applicants assert that Commission should have followed the first sentence of Section 367(a)(2), which they believe clearly prohibits inclusion of these contracts by specifically limiting power purchase obligations to their original contract terms. (See Modesto ID's Rhg. App., pp. 4-5; Merced ID's Rhg. App., p. 14; Joint Parties' Rhg. App., p. 3.) Applicants rely on the phrase "for the duration of the contract" in Section 367(a)(2) to support their claim. This reliance is misplaced.

The first sentence of Section 367(a)(2) does not limit the contracts to their original contract terms. Rather, it specifies that "[p]ower purchase contract obligations shall continue for the *duration* of the contract." (Pub. Util. Code, §367, subd. (a)(2) (emphasis added).) "Duration" refers to "[t]he portion of time during which anything exists." (*Black's Law Dict.* (6th ed. 1990) p. 504, col. 1.) As we ordered the utilities to extend the certain expired and soon to expire QF contracts in D.02-08-071 and D.03-12-062, these contracts *continued to exist* through the extension period. Moreover, if the Legislature had intended to limit the contracts to the original termination date of the contracts, as argued by the applicants, it certainly could have done so. Indeed other subdivisions of Section 367(a) were very specific with respect to both the termination dates and the amount of costs to be recovered. (See, e.g., Pub. Util. Code, § 367, subd. (a)(3)-(5).) Accordingly, there is no inconsistency with the first sentence of Section 367(a)(2).

Merced ID also argues that costs from the extended QF contracts can not be included because they are not costs that were being collected in commission-approved rates on December 20, 1995. (See, Merced ID's Rhg. App., pp. 14-15.) This argument equally lacks merit.. The QF contracts at issue were part of commission-approved rates on December 20, 1995 and these rates are recoverable so long as the contracts are in existence. As discussed above, the period of time during which these contracts exist has been extended pursuant to Commission orders. Consequently, the costs associated with these extensions remained part of commission-approved rates and were properly included in PG&E's CTC revenue requirement.

For the reasons discussed above, the applicants have failed to demonstrate grounds for finding legal error. Accordingly, we find no basis for granting rehearing of this issue.

G. AReM and CMTA's Motion to Intervene is denied.

Along with their application for rehearing, AReM and CMTA filed a Motion to Intervene in order to file for rehearing. Section 1731(b) specifies who may file an application for rehearing. It states: "After any order or decision has been made by the [C]ommission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing" (Pub. Util. Code, §1731, subd. (b).)

AReM and CMTA were not parties to this proceeding, nor are they stockholders or bondholders, or a party pecuniarily interested in PG&E. Further, while they had ample opportunity to intervene as parties on a timely basis, they failed to do so. Instead, they now seek party status solely in order to join CLECA in applying for rehearing of the Decision. Absent party status, AReM and CMTA lack standing to apply for rehearing. (See *Lang v. Railroad Commission of California* (1935) 2 Cal.2d 550; *Glenn-Colusa Irr. Dist. v. Paulson* (1926) 75 Cal.App. 57.)

In their motion, AReM and CMTA argue that granting them party status "will not prejudice any party, delay the schedule or expand the scope of this matter." (AReM and CMTA's Motion to Intervene, p. 2.) While this may be true, we do not find this is a sufficient basis for granting party status. Section 1731 establishes strict requirements for a party to file for rehearing and granting AReM and CMTA standing to file for rehearing on this basis would undermine this statute.

AReM and CMTA note in their Motion to Intervene that their members "have a substantial and direct interest in the calculation of PG&E's 2004 CTC revenue requirement." However, given this alleged "substantial" interest, AReM and CMTA fail to explain why they have waited until now to intervene, when they are unable to present and advocate their members' interests. Furthermore, they have failed to meet the requirements of Rule 45 of the Commission's Rules of Practice and Procedure, which requires the motion to "concisely state the facts and law supporting the motion." (Cal. Code of Regs., tit. 20, § 45.) A general statement of a "direct and substantial interest in the calculation of PG&E's 2004 CTC revenue requirement" does not meet this requirement.

Accordingly, we find that AReM and CMTA failed to meet the requirements of Rule 45 and their Motion to Intervene is denied. Therefore, AReM and CMTA are ineligible to join with CLECA in seeking rehearing of D.05-01-031, as they lack standing pursuant to Section 1731(b).[9]

H. Merced ID and Modesto ID's request for oral argument is denied.

Both Merced ID and Modesto ID request oral argument in their applications for rehearing pursuant to Rule 86.3(a) of the Commission's Rule of Practice and Procedure. (Merced ID's Rhg. App., pp. 15-16; Modesto ID's Rhg. App., p. 12.) This rule sets forth the general criteria for oral arguments, and states the following:

> "(a) An application for rehearing will be considered for oral argument if the application or a response to the application (1) demonstrates that oral argument will materially assist the Commission in resolving the application, **and** (2) the application or response raises issues of major significance for the Commission because the challenged order or decision:

[9] Although AReM and CMTA are not granted party status, the issues raised in Joint Parties' Rhg. App. are still addressed in this rehearing, since CLECA was a party to this proceeding and, thus, did have standing to file for rehearing. Therefore, AReM and CMTA's members are not harmed by denying the Motion to Intervene since their interests are still represented.

> (i) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
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> (ii) changes or refines existing Commission precedent;
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> (iii) presents legal issues of exceptional controversy, complexity, or public importance; and/or
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> (iv) raises questions of first impression that are likely to have significant precedential impact."

(Code of Regs., tit. 20, §86.3, subd. (a), emphasis added.)

Both rehearing applicants claim that D.05-01-031 "adopted a new Commission precedent" and raises "questions of first impression." Their claim is without merit.

Although Merced ID and Modesto ID allege that their rehearing applications raise issues of major significance, they fail to "demonstrate that the oral argument will materially assist the Commission in resolving the application." This is the first prong of Rule 86.3(a). Thus, the requests should be rejected on grounds of failing to comply with the requirement.

Also, the issues in this instant proceeding are not ones of first impression. The Commission has been dealing with the CRS-related MDL issues since it first issued D.03-07-028, and subsequent related decisions. The issues concerning the extension of the existing QF contracts have been recently considered by this Commission, albeit in the context of procurement. Merced ID and Modesto ID have failed to demonstrate what an oral argument would offer beyond what is contained in the applications for rehearing and the response to the rehearing applications. This is another reason for rejecting the requests for oral argument.

Further, contrary to the claims of Merced ID and Modesto, D.05-01-031 does not adopt a new Commission precedent. Rather, the decision made determinations on tail CTC that are consistent with the CRS principles set forth in D.03-07-028, and subsequent related decisions. No new Commission precedent has been established that deviate from these CRS principles. The issues related to the 16 QF contracts are also not inconsistent with these principles of cost responsibility allocated to MDL by Commission decisions and by the statutes.

For the reasons set forth above, the request of Merced ID and Modesto ID for an oral argument on the applications for rehearing is denied.

Therefore, **IT IS ORDERED** that:

1. Merced ID and Modesto ID's request for oral argument is denied.
2. AReM and CMTA's Motion to Intervene is denied.
3. Rehearing of D.05-01-031 is denied.
4. Application (A.) 03-08-004 is closed.

This order is effective today.

Dated October 27, 2005 at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners